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Fernandez, Ashley Nicole Phillips, and Nicole A.
9 Thomson*

10 UNITED STATES DISTRICT COURT
11 DISTRICT OF NEVADA
12

13 MARIAM BLUE, individually, and as
Special Administrator of the Estate of
14 STEPHEN BURRELL; LISA L. CARROLL
on behalf of her wards SMB, and SFB,
15 individually,

16 Plaintiffs,

17 vs.

18 CITY OF LAS VEGAS, a political
subdivision of the State of Nevada;
19 MICHELE FREEMAN, Former Chief of City
of Las Vegas Department of Public Safety, in
20 her official and individual capacities;
21 ROBERT STRAUBE, Deputy Chief of
Detention Services for City of Las Vegas
22 Department of Public Safety, LIEUTENANT
SHARON MEADS, LIEUTENANT CESAR
23 LANDROVE, LIEUTENANT VENUS
THOMPSON, LIEUTENANT DANIELLE
24 DAVIS, in their official and individual
25 capacities; WELLPATH CARE, F/K/A
CORRECT CARE SOLUTIONS,
26 individually; OFFICER DORADO,
individually; OFFICER D. CHAPARRO,
27 individually; OFFICER M. WASHINGTON,
28 individually; SGT M. PARKER, individually;

Case No.: 2:21-cv-00372-RFB-DJA

**DEFENDANTS JAMES TENNEY, M.D.,
MICHELLE FERNANDEZ, ASHLEY
NICOLE PHILLIPS, AND NICOLE A.
THOMSON ANSWER TO PLAINTIFFS'
FIRST AMENDED COMPLAINT**

1 SGT. C. SMITH, individually; SGT. WEDIG,
2 individually; SHAWN MAPLETON,
3 individually; MICHAEL POPOV,
4 individually; FRANCES BODDIE-SMALL,
5 individually; EBONYMICHELLE D.
6 GARNER, individually; PSYCH RN DEE,
7 individually; REGINA ELIZONDO,
8 individually, and DOES 1-35, inclusive all of
9 whom are sued in their individual capacities,
10
11 Defendants.

12 COME NOW Defendants JAMES TENNEY, M.D., MICHELLE FERNANDEZ, ASHLEY
13 NICOLE PHILLIPS, AND NICOLE A. THOMSON, by and through their counsel of record, S.
14 Brent Vogel, Esq. and Erin E. Jordan, Esq., of the law firm Lewis Brisbois Bisgaard & Smith, LLP,
15 and Answers Plaintiffs MARIAM BLUE's and LISA L. CARROLL's First Amended Complaint as
16 follows:

17 **INTRODUCTION**

18 1. Answering Paragraphs 1, 2, 3, 4 and 5 of Plaintiffs' Complaint, Defendants are
19 without sufficient information or knowledge to admit or deny the allegations contained therein and
20 upon that basis, deny each and every allegation contained therein.

21 2. Answering Paragraph 6 of Plaintiffs' Complaint, Defendants deny each and every
22 allegation contained therein.

23 3. Answering Paragraphs 7 and 8 of Plaintiffs' Complaint, Defendants are without
24 sufficient information or knowledge to admit or deny the allegations contained therein and upon that
25 basis, deny each and every allegation contained therein.

26 4. Answering Paragraphs 9, 10, 11 and 12 of Plaintiffs' Complaint, Defendants deny
27 each and every allegation contained therein.

28 **PARTIES**

5. Answering Paragraphs 13, 14, 15, 16, 17, 18, 19, 20, and 21 of Plaintiffs'
Complaint, Defendants are without sufficient knowledge to the form a belief as to the truth or falsity

1 of the allegations contained therein and upon that basis, deny each and every allegation contained
2 therein.

3 6. Answering Paragraph 22 of Plaintiffs' Complaint, Defendants deny each and
4 every allegation contained therein.

5 7. Answering Paragraphs 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37,
6 38, 39, 40, 41, 42, and 43 of Plaintiffs' Complaint, Defendants are without sufficient knowledge to
7 the form a belief as to the truth or falsity of the allegations contained therein and upon that basis,
8 deny each and every allegation contained therein.

9 8. Answering Paragraph 44 of Plaintiffs' Complaint, Defendants deny each and
10 every allegation contained therein.

11 9. Answering Paragraph 45 of Plaintiffs' Complaint, Defendants are without
12 sufficient knowledge to the form a belief as to the truth or falsity of the allegations contained therein
13 and upon that basis, deny each and every allegation contained therein.

14 10. Answering Paragraph 46 and 47 of Plaintiffs' Complaint, Defendants deny each
15 and every allegation contained therein.

16 11. Answering Paragraphs 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62,
17 63, 64, 65 and 66 of Plaintiffs' Complaint, Defendants are without sufficient knowledge to the form
18 a belief as to the truth or falsity of the allegations contained therein and upon that basis, deny each
19 and every allegation contained therein.

20 **JURISDICTION AND VENUE**

21 12. Answering Paragraphs 67, 68, and 69 of Plaintiffs' Complaint, Defendants admit
22 each and every allegation contained therein.

23 **FACTS COMMON TO ALL CLAIMS FOR RELIEF**

24 13. Answering Paragraphs 70, 71, 72, 73, 74, 75, 76 and 77 of Plaintiffs' Complaint,
25 Defendants are without sufficient knowledge to the form a belief as to the truth or falsity of the
26 allegations contained therein and upon that basis, deny each and every allegation contained therein.

27 14. Answering Paragraphs 78, 79 and 80 Plaintiffs' Complaint, Defendants deny each
28 and every allegation contained therein.

1 15. Answering Paragraphs 81, 82, 83, 84, 85, 86, 87, and 88 of Plaintiffs' Complaint,
2 Defendants are without sufficient knowledge to the form a belief as to the truth or falsity of the
3 allegations contained therein and upon that basis, deny each and every allegation contained therein.

4 16. Answering Paragraphs 89 and 90 of Plaintiffs' Complaint, Defendants deny each
5 and every allegation contained therein.

6 17. Answering Paragraph 91 of Plaintiffs' Complaint, Defendants are without
7 sufficient knowledge to the form a belief as to the truth or falsity of the allegations contained therein
8 and upon that basis, deny each and every allegation contained therein.

9 18. Answering Paragraph 92 of Plaintiffs' Complaint, Defendants deny each and
10 every allegation contained therein.

11 19. Answering Paragraphs 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103 and 104 of
12 Plaintiffs' Complaint, Defendants are without sufficient knowledge to the form a belief as to the
13 truth or falsity of the allegations contained therein and upon that basis, deny each and every
14 allegation contained therein.

15 20. Answering Paragraphs 105 and 106 of Plaintiffs' Complaint, Defendants deny
16 each and every allegation contained therein.

17 21. Answering Paragraphs 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118,
18 119, 120, 121, 122, 123, 124, and 125 of Plaintiffs' Complaint, Defendants are without sufficient
19 knowledge to the form a belief as to the truth or falsity of the allegations contained therein and upon
20 that basis, deny each and every allegation contained therein.

21 22. Answering Paragraphs 126, 127 and 128 of Plaintiffs' Complaint, Defendants
22 admit each and every allegation contained therein.

23 23. Answering Paragraphs 129, 130, 131, 132, 133, 134, and 135 of Plaintiffs'
24 Complaint, Defendants are without sufficient knowledge to the form a belief as to the truth or falsity
25 of the allegations contained therein and upon that basis, deny each and every allegation contained
26 therein.

27 24. Answering Paragraphs 136 and 137 of Plaintiffs' Complaint, Defendants deny
28 each and every allegation contained therein.

25. Answering Paragraphs 138 and 139 of Plaintiffs' Complaint, Defendants are without sufficient knowledge to form a belief as to the truth or falsity of the allegations contained therein and upon that basis, deny each and every allegation contained therein.

26. Answering Paragraphs 140, 141, 142, and 143 of Plaintiffs' Complaint, Defendants deny each and every allegation contained therein.

27. Answering Paragraphs 144, 145, and 146 of Plaintiffs' Complaint, Defendants are without sufficient knowledge to the form a belief as to the truth or falsity of the allegations contained therein and upon that basis, deny each and every allegation contained therein.

28. Answering Paragraph 147 of Plaintiffs' Complaint, Defendants deny each and every allegation contained therein.

29. Answering Paragraphs 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, and 158 of Plaintiffs' Complaint, Defendants are without sufficient knowledge to form a belief as to the truth or falsity of the allegations contained therein and upon that basis, deny each and every allegation contained therein.

30. Answering Paragraph 159 of Plaintiffs' Complaint, Defendants deny each and every allegation contained therein.

FIRST CLAIM FOR RELIEF

DELIBERATE INDIFFERENCE TO SERIOUS MEDICAL NEEDS

IN VIOLATION OF THE FOURTEENTH AMENDMENT (42 U.S.C § 1983)

Special Administrator v. Individual Defendants

31. Answering Paragraph 160 of Plaintiffs' Complaint, Defendants hereby repeat, reallege, and incorporate by reference their responses to Paragraphs 1 through 159 as though fully set forth herein.

32. Answering Paragraphs 161 and 162 of Plaintiffs' Complaint, Defendants are without sufficient knowledge to form a belief as to the truth or falsity of the allegations contained therein and upon that basis, deny each and every allegation contained therein.

33. Answering Paragraphs 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, and 173 of Plaintiffs' Complaint, Defendants deny each and every allegation contained therein.

SECOND CLAIM FOR RELIEF

DEPRIVATION OF FAMILIAL ASSOCIATION

IN VIOLATION OF THE FOURTEENTH AMENDMENT (42 U.S.C § 1983)

All Plaintiffs v. Individual Defendants

34. Answering Paragraph 174 of Plaintiffs' Complaint, Defendants hereby repeat, reallege, and incorporate by reference their responses to Paragraphs 1 through 173 as though fully set forth herein.

35. Answering Paragraphs 175 and 176 of Plaintiffs' Complaint, Defendants are without sufficient knowledge to the form a belief as to the truth or falsity of the allegations contained therein and upon that basis, deny each and every allegation contained therein.

36. Answering Paragraphs 177, 178, 179, 180, 181, and 182 of Plaintiffs' Complaint, Defendants deny each and every allegation contained therein.

THIRD CLAIM FOR RELIEF

OVER-DETENTION

IN VIOLATION OF FOURTEENTH AMENDMENT (42 U.S.C § 1983)

Special Administrator v. Individual Defendants

37. Answering Paragraph 183 of Plaintiffs' Complaint, Defendants hereby repeat, reallege, and incorporate by reference their responses to Paragraphs 1 through 182 as though fully set forth herein.

38. Answering Paragraphs 184 and 185 of Plaintiffs' Complaint, Defendants are without sufficient knowledge to the form a belief as to the truth or falsity of the allegations contained therein and upon that basis, deny each and every allegation contained therein.

39. Answering Paragraphs 186, 187, 188, 189, and 190 of Plaintiffs' Complaint, Defendants deny each and every allegation contained therein.

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FOURTH CLAIM FOR RELIEF

MONELL LIABILITY- FAILURE TO TRAIN (42 U.S.C § 1983)

Special Administrator v. City of Las Vegas & Wellpath

40. Answering Paragraph 191 of Plaintiffs' Complaint, Defendants hereby repeat, reallege, and incorporate by reference their responses to Paragraphs 1 through 190 as though fully set forth herein.

41. Answering Paragraphs 192, 193 (*a. through h.*), 194, 195, 196, 197, and 198 of Plaintiffs' Complaint, Defendants deny each and every allegation contained therein.

FIFTH CLAIM FOR RELIEF

MONELL LIABILITY- POLICY & CUSTOM (42 U.S.C § 1983)

Special Administrator v. City of Las Vegas & Wellpath

42. Answering Paragraph 199 of Plaintiffs' Complaint, Defendants hereby repeat, reallege, and incorporate by reference their responses to Paragraphs 1 through 198 as though fully set forth herein.

43. Answering Paragraphs 200 (*a. through i.*), 201, 202, 203 and 204 of Plaintiffs' Complaint, Defendants deny each and every allegation contained therein.

44. Answering Paragraph 205 of Plaintiffs' Complaint, Defendants are without sufficient knowledge to the form a belief as to the truth or falsity of the allegations contained therein and upon that basis, deny each and every allegation contained therein.

SIXTH CLAIM FOR RELIEF

DISABILITY DISCRIMINATION

**IN VIOLATION OF THE REHABILITATION ACT OF 1973 and TITLE II
OF THE AMERICANS WITH DISABILITIES ACT ("ADA")**

Special Administrator v. City of Las Vegas & Wellpath

45. Answering Paragraph 206 of Plaintiffs' Complaint, Defendants hereby repeat, reallege, and incorporate by reference their responses to Paragraphs 1 through 205 as though fully set forth herein.

1 46. Answering Paragraphs 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, and 217
2 of Plaintiffs' Complaint, Defendants deny each and every allegation contained therein.

3 **SEVENTH CLAIM FOR RELIEF**

4 **WRONGFUL DEATH**

5 **IN VIOLATION OF NEVADA STATE LAW**

6 ***SMB, SFB, and Mariam Blue v. All Defendants***

7 47. Answering Paragraph 218 of Plaintiffs' Complaint, Defendants hereby repeat,
8 reallege, and incorporate by reference their responses to Paragraphs 1 through 217 as though fully
9 set forth herein.

10 48. Answering Paragraphs 219 (*a. through d.*), 220, 221, and 222 (*a. through d.*) of
11 Plaintiffs' Complaint, Defendants deny each and every allegation contained therein.

12 49. Answering Paragraphs 223 and 224 of Plaintiffs' Complaint, Defendants are
13 without sufficient knowledge to the form a belief as to the truth or falsity of the allegations contained
14 therein and upon that basis, deny each and every allegation contained therein.

15 **EIGHTH CLAIM FOR RELIEF**

16 **WRONGFUL DEATH**

17 **IN VIOLATION OF NEVADA STATE LAW**

18 ***Special Administrator v. All Defendants***

19 50. Answering Paragraph 225 of Plaintiffs' Complaint, Defendants hereby repeat,
20 reallege, and incorporate by reference their responses to Paragraphs 1 through 224 as though fully
21 set forth herein.

22 51. Answering Paragraphs 226 (*a. through d.*), 227, 228 (*a. through d.*), and 229 of
23 Plaintiffs' Complaint, Defendants deny each and every allegation contained therein.

24 52. Answering Paragraphs 230 and 231 of Plaintiffs' Complaint, Defendants are
25 without sufficient knowledge to the form a belief as to the truth or falsity of the allegations contained
26 therein and upon that basis, deny each and every allegation contained therein.

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1 **NINTH CLAIM FOR RELIEF**

2 **NEGLECT OF A VULNERABLE PERSON**
3 **IN VIOLATION OF NEVADA STATE LAW**

4 ***Special Administrator v. All Defendants***

5 53. Answering Paragraph 232 of Plaintiffs' Complaint, Defendants hereby repeat,
6 reallege, and incorporate by reference their responses to Paragraphs 1 through 231 as though fully
7 set forth herein.

8 54. Answering Paragraphs 233, 234, 235, 236, 237, 238, and 239 of Plaintiffs'
9 Complaint, Defendants deny each and every allegation contained therein.

10 55. Answering Paragraphs 240 and 241 of Plaintiffs' Complaint, Defendants are
11 without sufficient knowledge to the form a belief as to the truth or falsity of the allegations contained
12 therein and upon that basis, deny each and every allegation contained therein.

13 **TENTH CLAIM FOR RELIEF**

14 **MEDICAL MALPRACTICE**
15 **IN VIOLATION OF NEVADA STATE LAW**

16 ***All Plaintiffs v. Medical Defendants***

17 56. Answering Paragraph 242 of Plaintiffs' Complaint, Defendants hereby repeat,
18 reallege, and incorporate by reference their responses to Paragraphs 1 through 241 as though fully
19 set forth herein.

20 57. Answering Paragraphs 243, 244, 245, 246, and 247 of Plaintiffs' Complaint,
21 Defendants deny each and every allegation contained therein.

22 58. Answering Paragraphs 248 and 249 of Plaintiffs' Complaint, Defendants are
23 without sufficient knowledge to the form a belief as to the truth or falsity of the allegations contained
24 therein and upon that basis, deny each and every allegation contained therein.

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26 **AFFIRMATIVE DEFENSES**

27 59. Plaintiffs' First Amended Complaint on file herein fails to state a claim against
28 Defendants upon which relief can be granted.

1 60. Plaintiffs' First Amended Complaint on file herein is barred by the applicable
2 statute of limitations.

3 61. The injuries, if any, allegedly suffered by Plaintiff as set forth in the Complaint
4 were caused in whole or in part by the negligence of a third party or third parties over which
5 Defendant had no control.

6 62. The damages, if any, alleged by Plaintiff are not the result of any acts of omission,
7 commission, or negligence, but were the result of a known risk(s), which was consented to by
8 Plaintiff.

9 63. Pursuant to NRS 41A.110, Defendant is entitled to a conclusive presumption of
10 informed consent.

11 64. The damages, if any, incurred by Plaintiff are not attributable to any act, conduct,
12 or omission on the part of the Defendant. Defendant denies that it was negligent or otherwise
13 culpable in any matter or in any degree with respect to the matters set forth in Plaintiff's Complaint.

14 65. That it has been necessary for Defendants to employ the services of an attorney
15 to defend this action and a reasonable sum should be allowed Defendant for attorneys' fees, together
16 with costs of suit incurred herein.

17 66. Pursuant NRS 41A.035 Plaintiff's non-economic damages, if any, may not exceed
18 \$350,000.

19 67. Defendants are not jointly liable with any other entities that may or may not be
20 named in this action and will only be severally liable for that portion of Plaintiff's claims that
21 represent the percentage of negligence attributable to Defendants, if any.

22 68. Plaintiff's damages, if any, were not proximately caused by Defendants.

23 69. Plaintiff's injuries and damages, if any, are the result of forces of nature over
24 which Defendants had no control or responsibility.

25 70. Plaintiff is barred from asserting any claims against Defendants because the
26 alleged damages were the result of one or more unforeseeable intervening and superseding causes.

27 71. Plaintiff failed to mitigate damages, if any.

28 72. Plaintiff failed to allege facts in support of any award of pre-judgment interest.

1 73. The incident alleged in the Amended Complaint, and the resulting damages, if
2 any, to Plaintiff, was proximately caused or contributed to by the Plaintiff's own negligence, and
3 such negligence was greater than the negligence, if any, of Defendants.

4 74. Pursuant to FRCP 11, as amended, all applicable Affirmative Defenses may not
5 have been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon
6 the filing of Defendants' Answer and, therefore, Defendants reserve the right to amend their Answer
7 to allege additional Affirmative Defenses if subsequent investigation warrants.

8 75. Plaintiffs failed to substantively comply with NRS 41A.071.

9 76. At all times mentioned herein, Defendants acted reasonably and in good faith with
10 regard to the acts and transactions which are the subject of this lawsuit.

11 77. To the extent Plaintiffs has been reimbursed from any source for any special
12 damages claimed to have been sustained as a result of the incidents alleged in Plaintiff's Complaint,
13 Defendants may elect to offer those amounts into evidence and, if this Defendants so elect,
14 Plaintiffs' special damages shall be reduced by those amounts pursuant to NRS 42.021.

15 78. Defendants hereby incorporate by reference those affirmative defenses
16 enumerated in FRCP 8 as if fully set forth herein. In the event further investigation or discovery
17 reveals the applicability of such defenses, Defendants reserve the right to seek leave of the court to
18 amend this Answer to assert the same. Such defenses are incorporated herein by reference for the
19 purpose of not waiving the same.

20 79. Defendants avail themselves of all affirmative defenses and limitations of action
21 as set out in NRS 41.085, 41A.035, 41A.045, 41A.061, 41A.071, 41A.097, 41A.100, 42.005,
22 42.021, 41.141, and all applicable subparts.

23 80. NRS Chapters 41 and 41A limit damages that may be collectable against this
24 Answering Defendants.

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WHEREFORE, Defendants pray for judgment against Plaintiffs as follows:

1. That Plaintiffs take nothing by virtue of their First Amended Complaint;
2. That Plaintiffs be held liable in contribution and or common law indemnity and contribution, and for such other and further relief to which Defendants are justly entitled;
3. That Defendants recover costs of suit incurred herein;
4. That Defendants recover attorneys' fees and costs; and
5. For such other and further relief as the Court may deem just, equitable, and proper.

DATED this 4th day of January, 2022

LEWIS BRISBOIS BISGAARD & SMITH LLP

By /s/ Erin E. Jordan

S. BRENT VOGEL

Nevada Bar No. 6858

ERIN E. JORDAN

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Attorneys for Defendants Wellpath, Ebony-Michelle Garner, Shawn Mapleton, M.D., Regina Elizondo, Francis Boddie-Small, Virgilio Padilla, Vicky Morgan, James Tenney, M.D., Michelle Fernandez, Ashley Nicole Phillips, and Nicole A. Thomson

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of January, 2022, I electronically filed the foregoing
**DEFENDANTS JAMES TENNEY, M.D., MICHELLE FERNANDEZ, ASHLEY NICOLE
PHILLIPS, AND NICOLE A. THOMSON ANSWER TO PLAINTIFFS' FIRST AMENDED
COMPLAINT** with the Clerk of Court for the United States District Court, and served the
registered user participants in the case, by using the Court's CM/ECF system.

/s/ Maria T. San Juan
An employee of
Lewis Brisbois Bisgaard & Smith LLP